

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
CLERK'S OFFICE

SEP -7 P 3:53

THE UNITED STATES OF AMERICA
for the use of K & K ACOUSTICAL
CEILINGS, INC.,
Plaintiff

05 - 11828 JLT

DISTRICT COURT
DISTRICT OF MASS

v.

CIVIL ACTION NO:

HOON COMPANIES, INC.,
PEABODY CONSTRUCTION COMPANY, INC.,
O.D.F. CONTRACTING CO., INC.,
AND TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
Defendants

MAGISTRATE JUDGE Sorkin

RECEIPT # 6677
AMOUNT \$ 250
SUMMONS ISSUED 9
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. FOM
DATE 9/8/05

COMPLAINTI. PRELIMINARY STATEMENT

This is a civil action brought by Plaintiff, K & K Acoustical Ceilings, Inc. pursuant to the Miller Act, 40 U.S.C. section 270a-e, to collect monies owed to it by defendants, Hoon Companies, Inc., Peabody Construction Company, Inc., O.D.F. Contracting Co., Inc., and Travelers Insurance Co. The action arises out of a construction project known as Academy Homes, II located in Boston, Suffolk County, Massachusetts. Plaintiff seeks a Judgment against defendants Hoon Companies, Inc., Peabody Construction Company, Inc., O.D.F. Contracting Co., Inc., and surety defendant Travelers Insurance Co. in the amount of \$7,850.00 plus interest, costs and reasonable attorneys fees.

II. JURISDICTION

1. The jurisdiction of this court is invoked pursuant to 40 U.S.C. §270b(b) and 28 U.S.C. §1331.

III. PARTIES

2. The plaintiff, K & K Acoustical Ceilings, Inc., ("K & K") is a corporation duly organized under the laws of the Commonwealth of Massachusetts with a place of business in Tewksbury, Middlesex County, Massachusetts.

3. The defendant, Hoon Companies, Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts, with a place of business in Boston, Suffolk County, Commonwealth of Massachusetts.

4. The defendant, Peabody Construction Co., Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts, with a place of business in Braintree, Norfolk, County, Commonwealth of Massachusetts.

5. The defendant, O.D.F. Contracting Co., Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts, with a place of business in Boston, Suffolk County, Commonwealth of Massachusetts.

6. The defendant, Travelers Casualty and Surety Company of America ("Travelers"), is an entity doing business in the Commonwealth of Massachusetts.

IV. FACTS COMMON TO ALL COUNTS

7. The defendant Peabody Construction Company, Inc., defendant O.D.F. Contracting Co., Inc., and defendant Hoon Companies, Inc., (hereinafter collectively referred to as "JV") are engaged in a Joint Venture concerning a construction project known as Academy Homes, II (hereafter the "Project") located in Boston, Suffolk County, Commonwealth of Massachusetts.

5. Defendant, Travelers was at all times herein-mentioned, and is the surety under said contract, and has heretofore furnished a Payment Bond.

COUNT I

9. The plaintiff repeats and realleges paragraphs 1-8 as if expressly rewritten and set forth herein.

10. On or about May 2001, defendant JV, entered into an agreement with plaintiff whereby plaintiff would furnish materials to defendant JV in connection with the construction of the Project.

11. The plaintiff has fully performed all obligations under said contract with the defendant.

12. The defendant JV has not paid the plaintiff the sum of \$7,850.00.

13. Despite plaintiff's repeated requests for payment, the defendant JV has failed to make payment of the amount due.

WHEREFORE, the plaintiff, K & K Acoustical Ceilings, Inc., demands judgment against the defendants, Peabody Construction Company, Inc., O.D.F. Contracting Co., Inc., and Hoon Companies, Inc., jointly and severally, in the amount of \$7,850.00 together with interest, reasonable attorneys' fees, court costs and for such other and further relief as this Court may deem proper.

COUNT II

14. The plaintiff repeats and realleges paragraphs 1-13 as if expressly rewritten and set forth herein.

15. From May 2001, plaintiff furnished materials to defendant JV, in connection with defendant's request for said materials for use in the construction of the Project.

16. The reasonable value of the materials provided by the plaintiff to the defendant, and which has not been paid is \$7,850.00.

17. Despite plaintiff's repeated requests for payment, the defendant has failed to make payment of the amount due.

WHEREFORE, the plaintiff K & K Acoustical Ceilings, Inc., demands judgment against the defendants, Peabody Construction Company, Inc., O.D.F. Contracting Co., Inc., and Hoon Companies, Inc., jointly and severally, in the amount of \$7,850.00, together with interest, reasonable attorneys' fees, court costs and for such other and further relief as this Court may deem proper.

COUNT III

18. The plaintiff repeats and realleges paragraphs 1-17 as if expressly rewritten and set forth herein.

19. Defendant Travelers is the surety company obtained by defendant JV, in connection with the construction of the Academy Homes, II, project in Boston, Suffolk County, Commonwealth of Massachusetts.

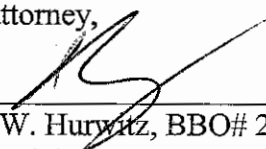
20. Defendant Travelers did, and does provide the security obtained in connection with the Project in the form of a payment bond.

21. The amount due plaintiff on said project is \$7,850.00.

22. Defendant Travelers as surety and pursuant to said payment bond, are liable to plaintiff for \$7,850.00.

WHEREFORE, the plaintiff K & K Acoustical Ceilings, Inc., demands judgment against defendant Travelers Casualty and Surety Company of America, in the sum of \$7,850.00, together with interest, costs, reasonable attorneys fees and such other and further relief as this Court deems just.

K & K ACOUSTICAL CEILINGS, INC.,
By its attorney,



Robert W. Hurwitz, BBO# 245810
Wayne, Richard & Hurwitz LLP
One Boston Place
Boston, MA 02108
(617) 720-7870

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) THE UNITED STATES OF AMERICA FOR THE USE OF
K & K ACOUSTICAL CEILINGS, INC. v. HOON COMPANIES, INC.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert W. Hurwitz

ADDRESS Wayne, Richard & Hurwitz LLP, One Boston Place, Boston MA 02108

TELEPHONE NO. 617-720-7870

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

THE UNITED STATES OF AMERICAN FOR THE
USE OF K & K ACOUSTICAL CEILINGS, INC.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert W. Hurwitz Tel: 617-720-7870
Wayne, Richard & Hurwitz LLP
One Boston Place, Boston MA 02108

DEFENDANTS HOON COMPANIES, INC., PEABODY
CONSTRUCTION COMPANY, INC., OYDCH CONTRACTING
CO., INC., AND TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, INC. SUFFOLK
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

40 U.S.C. § 270(b)

Brief description of cause:

Miller Act claim for labor and materials provided

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
7,850.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/6/05

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____